



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 162 3102]

PayPal, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before March 29, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write: “In the Matter of PayPal, Inc.” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/venmoconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “In the Matter of PayPal, Inc.” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Rossen (202-326-3679) and Lisa Rothfarb (202-326-2602), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 27, 2018), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 29, 2018. Write “In the Matter of PayPal, Inc.” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/venmoconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “In the Matter of PayPal, Inc.” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC. 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with

FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 29, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from PayPal, Inc. (“PayPal”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again

review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves Venmo, a peer-to-peer payment service owned and operated by PayPal. Venmo has offered its peer-to-peer payment service to consumers since 2011, and was acquired by PayPal in 2013. Consumers can use Venmo to transfer money to one another using a mobile application or through a website at www.venmo.com. Venmo's payment service incorporates a social networking component through a social "news feed" that shares information about a consumer's Venmo transactions.

The Commission's proposed complaint alleges that PayPal, through its operation of Venmo, has violated Section 5 of the FTC Act and the Gramm-Leach-Bliley ("GLB") Act's Privacy and Safeguards Rules.

First, the proposed complaint alleges that Venmo has represented to consumers that money is credited to their Venmo account and can be transferred to an external bank account after other Venmo users have sent funds to those consumers, but has failed to disclose, or failed to disclose adequately, that funds could be frozen or removed because Venmo has not yet approved the underlying transaction. As alleged in the proposed complaint, Venmo has made representations to consumers that they have been paid and they can transfer money from Venmo to an external bank account. For example, Venmo has sent users notifications that have stated "Money credited to your Venmo balance. Transfer to your bank overnight." Despite these claims, the proposed complaint alleges that, in numerous instances, consumers have been unable to transfer funds to their bank accounts as promised. Venmo has waited until a consumer attempts to transfer funds to

an external bank account to review the transaction for certain issues. This review has resulted in Venmo delaying the transfer or reversing the transaction in numerous instances.

Second, the proposed complaint alleges that Venmo has failed to disclose material information to consumers about the operation of Venmo's privacy settings. As alleged in the proposed complaint, by default, all Venmo transactions are shared on Venmo's social news feed, which displays the names of the payer and recipient, the date of the transaction, and a message written by the user that initiated the transaction. Venmo offers privacy settings that consumers can use to limit the visibility of their transactions. However, to ensure that all future payments remain private, a consumer must change two similarly labeled settings. The first setting, referred to in the proposed complaint as the "Default Audience Setting," would lead a reasonable consumer to believe that they can restrict the visibility of their future transactions on the news feed to specific groups, such as "Participants Only" or "Friends." In fact, however, a consumer must also change a second setting, referred to in the proposed complaint as the "Transaction Sharing Setting," to ensure that all of her transactions are private. If a consumer fails to restrict this second setting, in some circumstances, transactions will still be published publicly even if the consumer has chosen a "private" default audience.

Venmo also offers a privacy setting to control the visibility of an individual transaction, referred to in the proposed complaint as the "Individual Audience Setting." The proposed complaint alleges that Venmo failed to disclose, or failed to disclose adequately, that the Individual Audience Setting does not ensure that an individual

transaction remains private unless a consumer also separately restricts the Transaction Sharing Setting described above. If a consumer has not changed both settings, there are circumstances where the other participant in the transaction can retroactively change a transaction from private to public.

Third, the proposed complaint alleges that Venmo represented until approximately March 2015 that it protected consumers' financial information with "bank grade security systems" but in fact failed to implement basic safeguards necessary to secure consumer accounts from unauthorized transactions and did not provide "bank grade security." For example, Venmo failed to provide consumers with security notifications about changes to account settings from within the consumer's Venmo account, such as when a consumer's email address or password had been changed. The proposed complaint alleges that Venmo's representation that it provided "bank grade security systems" constitutes a deceptive act or practice under Section 5 of the FTC Act.

Fourth, the proposed complaint alleges that Venmo violated the GLB Act's Privacy Rule and Regulation P by failing to provide users with a clear and conspicuous initial privacy notice, disseminating an initial privacy notice that does not accurately reflect its policies and practices, and failing to deliver the initial privacy notice so that each customer could reasonably be expected to receive actual notice.

Finally, the proposed complaint alleges that Venmo violated the GLB Act's Safeguards Rule by failing to have a comprehensive written information security program before August 2014, failing to identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information, and assessing the

sufficiency of any safeguards in place to control those risks before September 2014, and failing to design and implement information safeguards to control the known risks to the security, confidentiality, and integrity of customer information.

The proposed order contains injunctive provisions addressing the alleged deceptive conduct and Rule violations in connection with PayPal's operation of a payment and social networking service. Part I of the proposed order prohibits PayPal from making misrepresentations regarding material restrictions, limitations, or conditions to use any payment and social networking service. It also prohibits misrepresentations about data security and privacy, including misrepresentations regarding the extent of control provided by any privacy settings and the extent to which PayPal implements or adheres to a particular level of security.

Part II of the proposed order requires PayPal, when making any representations through any payment and social networking service about the availability of funds to be transferred or withdrawn to a bank account, to provide clear and conspicuous disclosures that transactions are subject to review and, if true, that funds could be frozen or removed as a result of transaction reviews. Part II also requires PayPal to issue a one-time notice informing current Venmo users that when they attempt to transfer or withdraw funds to a bank account, Venmo will perform transaction reviews and based on such review, may block or delay the transfer or withdrawal, and/or reverse a payment transaction.

Part III of the proposed order requires PayPal to provide clear and conspicuous disclosures to users related to how any payment and social networking service shares transaction information with other users and how a consumer can limit the visibility or sharing of transaction information through privacy settings.

Part IV of the agreement prohibits violations of the GLB Privacy and Safeguards Rules.

Part V requires PayPal to obtain biennial data security assessments for ten years.

Parts VI through IX of the proposed order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring PayPal to provide information or documents necessary for the Commission to monitor compliance. Part X states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark
Secretary.

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